

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PREMIER INTERNATIONAL
ASSOCIATES LLC,
an Illinois Limited Liability Company,

Plaintiff,

v.

HEWLETT-PACKARD CO.,
a Delaware Corporation,

ACER INC.,
a Taiwan Corporation,

ACER AMERICA CORP.,
a California Corporation,

GATEWAY INC.,
a Delaware Corporation,

YAHOO! INC.,
a Delaware Corporation,

AMAZON.COM, INC.,
a Delaware Corporation, and

AMAZON DIGITAL SERVICES, INC.,
a Delaware Corporation,

Defendants.

Civil No. 2:07-cv-00395

TRIAL BY JURY DEMANDED

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff, PREMIER INTERNATIONAL ASSOCIATES LLC, by its attorneys, hereby complains against Defendants HEWLETT-PACKARD CO., ACER INC., ACER AMERICA CORP., GATEWAY INC., YAHOO! INC., AMAZON.COM, INC., and AMAZON DIGITAL SERVICES, INC., collectively, “Defendants,” as follows:

I.

INTRODUCTION

1. In 1997, at a time when digital music delivery and management systems were largely in their infancy, PREMIER, filed a patent application disclosing new ways of organizing, managing, and delivering digital music. Two years later, the “digital music revolution” began with the release of the first version of the peer-to-peer file sharing service, the original Napster. Subsequently, many of PREMIER’s inventions were incorporated into consumer products.

2. Defendants have profited enormously from the digital music revolution, a revolution that fundamentally changed the way people are acquiring, managing and enjoying digital music.

3. United States Patent Nos. 6,243,725 and 6,763,345, both assigned to PREMIER, generally disclose an integrated multi-tier music management system that claim inventions that are fundamental to the success of the digital music revolution.

II.

PARTIES

4. Plaintiff PREMIER INTERNATIONAL ASSOCIATES LLC (“PREMIER”) is an Illinois Limited Liability Company qualified to do business in the State of Texas.

5. On information and belief, Defendant HEWLETT-PACKARD CO. (“HP”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 3000 Hanover Street, Palo Alto, CA 94304.

6. On information and belief, Defendant ACER INC. is a corporation organized and existing under the laws of Taiwan, with its principal place of business located at 7F, No. 137, Sec. 2, Chien Kuo N. Road, Taipei, Taiwan, R.O.C. On information and belief, Defendant ACER AMERICA CORP. is a corporation organized and existing under the laws of the State of California, with its principal place of business located at 333 West San Carlos Street, Suite 1500, San Jose, CA 95110. ACER INC. and ACER AMERICA CORP. will be collectively referred to as “ACER.”

7. On information and belief, Defendant GATEWAY INC. (“GATEWAY”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 7565 Irvine Center Drive, Irvine, CA 92618.

8. On information and belief, Defendant YAHOO! INC. (“YAHOO”) is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 701 First Avenue, Sunnyvale, CA 94089.

9. On information and belief, Defendant AMAZON.COM, INC. is a corporation organized and existing under the laws of the State of Delaware, with its

principal place of business located at 1200 12th Avenue South, Suite 1200, Seattle, WA 98144. On information and belief, Defendant AMAZON DIGITAL SERVICES, INC. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business located at 1200 12th Avenue South, Suite 1200, Seattle, WA 98144. AMAZON.COM, INC. and AMAZON DIGITAL SERVICES, INC. will be collectively referred to as “AMAZON.”

III.

JURISDICTION AND VENUE

10. This Court has exclusive subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338(a) because this action arises under the patent laws of the United States, including 35 U.S.C. § 271 *et seq.* This Court has personal jurisdiction over Defendants because each has committed acts giving rise to this action within Texas and this judicial district and has established minimum contacts within the forum such that the exercise of jurisdiction over Defendants would not offend traditional notions of fair play and substantial justice.

11. Venue properly lies in the Eastern District of Texas pursuant to 28 U.S.C. §§ 1391(b), 1391(c), and 1400(b), because each Defendant has committed acts within this judicial district giving rise to this action, and each Defendant “resides” in this District as it is subject to personal jurisdiction in this District. Venue is also appropriate because Defendants do business in this judicial district, including one or more of the infringing acts of offering for sale, selling, using infringing products, or providing service and support to Defendants’ customers in this District and they do so through established distribution channels.

IV.

CLAIMS

12. PREMIER realleges and incorporates by reference the allegations set forth in Paragraphs 1-11 above as if fully set forth herein.

13. On June 5, 2001 United States Patent Number 6,243,725 (the '725 patent), entitled "List Building System" was duly and lawfully issued by the United States and Trademark Office to James D. Hempleman, Sandra M. Hempleman and Neil A. Schneider. A true and correct copy of the '725 patent is attached as Exhibit A.

14. On July 13, 2004 United States Patent Number 6,763,345 (the '345 patent), entitled "List Building System" was duly and lawfully issued to James D. Hempleman, Sandra M. Hempleman and Neil A. Schneider. A true and correct copy of the '345 patent is attached as Exhibit B.

15. PREMIER is the assignee of the '725 patent and the '345 patent (collectively, the patents-in-suit) and holds the right to sue and recover for past, present, and future infringement thereof.

16. HP is engaged in the business of making, offering for sale, selling, and supporting personal desktop and notebook computers ("HP computers"). A substantial number of HP computers shipped to customers are configured to include a processor, a hard drive, a video card, a monitor, an audio card, speakers, a USB Port, a CD and/or DVD writer, and a network card or modem to connect to the Internet. A substantial number of HP computers are shipped with a pre-installed version of either, Microsoft's Windows XP or Windows Vista operating system. Every version of Windows XP and Windows Vista includes the Windows Media Player application. HP computers

configured with the above-mentioned hard and software enable a user, for example, a) to import (“rip”) music from Audio CDs and store the digital music files on the computers hard disk, b) to download music from a variety of online music stores via an Internet connection, c) to manage music stored on the hard disk, including but not limited to, creating playlists, d) to audibly and visually present the music, and e) to download music from the personal computer to a portable storage device via a USB connection.

17. HP has infringed and continues to infringe under 35 U.S.C. § 271 the patents-in-suit. The infringing acts include, but are not limited to, making, offering for sale, selling, distributing and supporting certain of the products identified in paragraph 16 above, including, but not limited to, certain HP computers, such as, for example, the HP Pavilion dv6500t series notebook and the HP Pavilion a6100y series desktop.

18. HP’s acts of infringement have caused damage to PREMIER. Under 35 U.S.C. § 284, PREMIER is entitled to recover from HP the damages sustained by PREMIER as a result of its infringement of the patents-in-suit. HP’s infringement on PREMIER’s exclusive rights under the patents-in-suit will continue to damage PREMIER causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

19. ACER is engaged in the business of making, offering for sale, selling, and supporting personal desktop and notebook computers (“ACER computers”). A substantial number of ACER computers shipped to customers are configured to include a processor, a hard drive, a video card, a monitor, an audio card, speakers, a USB Port, a CD and/or DVD writer, and a network card or modem to connect to the Internet. A substantial number of ACER computers are shipped with a pre-installed version of either

Microsoft's Windows XP or Windows Vista operating system. Every version of Windows XP and Windows Vista includes the Windows Media Player application. ACER computers configured with the above-mentioned hard and software enable a user, for example, a) to import ("rip") music from Audio CDs and store the digital music files on the computers hard disk, b) to download music from a variety of online music stores via an Internet connection, c) to manage music stored on the hard disk, including but not limited to, creating playlists, d) to audibly and visually present the music, and e) to download music from the personal computer to a portable storage device via a USB connection.

20. ACER has infringed and continues to infringe under 35 U.S.C. § 271 the patents-in-suit. The infringing acts include, but are not limited to, making, offering for sale, selling, distributing and supporting certain of the products identified in paragraph 19 above, including, but not limited to, certain ACER computers, such as, for example, the Aspire 3050 notebook and the Aspire T180 desktop.

21. ACER's acts of infringement have caused damage to PREMIER. Under 35 U.S.C. § 284, PREMIER is entitled to recover from ACER the damages sustained by PREMIER as a result of its infringement of the patents-in-suit. ACER's infringement on PREMIER's exclusive rights under the patents-in-suit will continue to damage PREMIER causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

22. GATEWAY is engaged in the business of making, offering for sale, selling, and supporting personal desktop and notebook computers ("GATEWAY computers"). A substantial number of GATEWAY computers shipped to customers are

configured to include a processor, a hard drive, a video card, a monitor, an audio card, speakers, a USB Port, a CD and/or DVD writer, and a network card or modem to connect to the Internet. A substantial number of GATEWAY computers are shipped with a pre-installed version of either Microsoft's Windows XP or Windows Vista operating system. Every version of Windows XP and Windows Vista includes the Windows Media Player application. GATEWAY computers configured with the above-mentioned hard and software enable a user, for example, a) to import ("rip") music from Audio CDs and store the digital music files on the computers hard disk, b) to download music from a variety of online music stores via an Internet connection, c) to manage music stored on the hard disk, including but not limited to, creating playlists, d) to audibly and visually present the music, and e) to download music from the personal computer to a portable storage device via a USB connection.

23. GATEWAY has infringed and continues to infringe under 35 U.S.C. § 271 the patents-in-suit. The infringing acts include, but are not limited to, making, offering for sale, selling, distributing and supporting certain of the products identified in paragraph 22 above, including, but not limited to, certain GATEWAY computers, such as, for example, the NX 100X notebook and the DX430 desktop.

24. GATEWAY's acts of infringement have caused damage to PREMIER. Under 35 U.S.C. § 284, PREMIER is entitled to recover from GATEWAY the damages sustained by PREMIER as a result of its infringement of the patents-in-suit. GATEWAY's infringement on PREMIER's exclusive rights under the patents-in-suit will continue to damage PREMIER causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

25. YAHOO is engaged in the business of making, offering for sale, selling, distributing, operating, and supporting the YAHOO! Music Unlimited online music service. YAHOO customers access the Yahoo! Music Unlimited online music store from which users can download digital music files to their personal computer using the Yahoo! Music Jukebox software. YAHOO subscribers can rent music for a subscription fee or purchase music for unlimited use. The Yahoo! Music Jukebox software enables users to, for example, but not limited to, automatically import music from CD to the user's library, to browse and download music from the Yahoo! Music Unlimited music store, to manage music files on the personal computer, to create playlists and to download or write music files to portable digital storage devices.

26. YAHOO customers can also access the Yahoo! Music Unlimited online music store directly from certain portable devices without the need for a personal computer. For example, certain AT&T Mobile Music enabled phones can access the Yahoo! Music Unlimited online music store "over-the-air" and allow users to browse and purchase music directly from the device. Furthermore, certain portable digital music players, such as, for example, the Sandisk SansaConnect, can also access the Yahoo! Music Unlimited online music store directly "over-the-air", enabling users to browse and download music directly onto the player.

27. YAHOO has infringed and continues to infringe under 35 U.S.C. § 271 the patents-in-suit. The infringing acts include, but are not limited to, making, offering for sale, selling, distributing, supporting and operating certain of the products identified in paragraphs 25 - 26 above, including, but not limited to the Yahoo! Music Unlimited online music store and the Yahoo! Music Jukebox software.

28. YAHOO's acts of infringement have caused damage to PREMIER. Under 35 U.S.C. § 284, PREMIER is entitled to recover from YAHOO the damages sustained by PREMIER as a result of its infringement of the patents-in-suit. YAHOO's infringement on PREMIER's exclusive rights under the patents-in-suit will continue to damage PREMIER causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

29. AMAZON is engaged in the business of making, offering for sale, selling, distributing, operating, and supporting the Amazon MP3 Music Store/Service from which users can purchase and download songs to their personal computers. With the Amazon MP3 Downloader software available for download from AMAZON, users can seamlessly add their downloaded songs to the inventory of the music management software application installed on the user's personal computer, such as Apple's iTunes or MICROSOFT's Windows Media Player.

30. AMAZON has infringed and continues to infringe under 35 U.S.C. § 271 the patents-in-suit. The infringing acts include, but are not limited to, making, offering for sale, selling, distributing, supporting and operating certain of the products identified in paragraph 29 above, including, but not limited to the Amazon MP3 Music Store/Service and the Amazon MP3 Downloader software.

31. AMAZON's acts of infringement have caused damage to PREMIER. Under 35 U.S.C. § 284, PREMIER is entitled to recover from AMAZON the damages sustained by PREMIER as a result of its infringement of the patents-in-suit. AMAZON's infringement on PREMIER's exclusive rights under the patents-in-suit will continue to

damage PREMIER causing irreparable harm, for which there is no adequate remedy of law, unless enjoined by this Court under 35 U.S.C. § 283.

PRAYER FOR RELIEF

WHEREFORE, PREMIER respectfully requests that this Court enter judgment against Defendants HEWLETT-PACKARD CO., ACER INC., ACER AMERICA CORP., GATEWAY INC., YAHOO! INC., AMAZON.COM, INC., and AMAZON DIGITAL SERVICES, INC., as follows:

- (a) For judgment that Defendants have infringed and continue to infringe the patents-in-suit.
- (b) for preliminary and permanent injunctions under 35 U.S.C. § 283 against Defendants and their respective directors, officers, employees, agents, subsidiaries, parents, attorneys, and all persons acting in concert, on behalf of, in joint venture, or in partnership with any of the Defendants enjoining any further acts of infringement;
- (c) for damages to be paid by Defendants adequate to compensate PREMIER for their infringement, including interest, costs and disbursements as justified under 35 U.S.C. § 284;
- (d) for judgment finding this to be an exceptional case, and awarding PREMIER attorney fees under 35 U.S.C. § 285; and
- (e) for such further relief at law and in equity as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rules of Civil Procedure Rule 38, Plaintiff PREMIER hereby demands a jury trial on all issues triable by jury.

Dated: December 10, 2007

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that counsel of record who are deemed to have consented to electronic service are being served this 10th day of December, 2007, with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3). Any other counsel of record will be served by electronic mail, facsimile transmission and/or first class mail on this same date.

/s/ Elizabeth L. DeRieux
Elizabeth L. DeRieux